IN THE HIGH COURT OF JUDICATURE FOR

RAJASTHAN AT JODHPUR

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O R D E R

Karan Singh Mehta
vs.
State of Rajasthan & Ors.

S.B. CIVIL WRIT PETITION NO.7094/2003 UNDER ARTICLE 226 AND 227 OF THE CONSTITUTION OF INDIA.

DATE OF ORDER :: 20th November, 2006

PRESENT

HON'BLE SHRI JUSTICE MOHAMMAD RAFIQ

Mr.M.S. Singhvi, Advocate for the petitioner.
Mr.Rameshwar Dave, Dy. Govt. Advocate.

BY THE COURT

I have heard learned counsel for the parties and perused the record.

In the present writ petition, the petitioner has prayed for a direction to the respondents to grant him benefit of stepping up of

pay as has been allowed to Shri Satya Narayan Agrawal, Shri Gokul Prasad Sharma and Shri Kailash Chandra Pathak pursuant to the judgment of Rajasthan Civil Services Appellate Tribunal dated 28th July, 1989 which has been upheld by Co-ordinate Bench of this Court vide judgment dated 23rd November, 2001. Subsequently, a similar judgment was also passed in the case of Radhe Shyam Ajmera vs. State of Rajasthan & Anr. in S.B. Civil Writ Petition No.3243/2001.

Shri. M.S. Singhvi learned counsel for the petitioner has argued that the case of the petitioner is squarely covered by the aforesaid judgments, inasmuch as, those who have already been granted benefit of stepping of pay were appointed under the same order dated 03rd August, 1968 in which the name of the petitioner appears at serial No.10. Shri Singhvi while relying on the observations of the Hon'ble Supreme Court in State of Karnataka & Ors. Vs. C. Lalitha reported in 2006 (2) SCC 747 wherein it was held that if one set of persons has approached the Court and others have not that does not mean the person similarly situated should be treated differently. He therefore argued that the writ petition is allowed.

On the other hand, Shri Rameshwar Dave, learned Dy. Govt. Advocate although made a feeble attempt to oppose the writ petition but he could not distinguish the case of the petitioner from that of others. He was not in a position to deny the fact that some of the juniors of the petitioner have also been allowed such benefit pursuant to the judgment passed by the Tribunal which has been upheld by this Court and that the aforesaid judgments have attained finality.

While upholding the judgment of the Tribunal, this Court in its judgment dated 23rd November, 2001 referred to supra directed the respondents to make compliance of the judgment of the Tribunal particularly when it decided not to challenge the said judgment in the case of one Ramesh Chand Kacholia. It cannot be appreciated that even though in a series of judgments, this Court has allowed claim of certain persons yet those similarly circumstanced are being required to approach the Court.

The Hon'ble Supreme Court in C.Lalitha (supra) has disapproved of such attitude on the part of the executive. The Court in para 29 of the judgment observed as under:-

"**29.** Service jurisprudence evolved by this Court

> from time to time postulates that all persons similarly situated should be treated similarly. Only because one person has approached the court that would not mean that persons similarly situated should be treated differently. It is furthermore well settled that the question of seniority should be governed by the rules. It may be true that this Court took notice of the subsequent events, namely, that in the meantime she had also been promoted as Assistant Commissioner which was a Category I post but the direction to create a supernumerary post to adjust her must be held to have been issued only with a view to accommodate her therein as otherwise she might have been reverted and not for the purpose of conferring a benefit to which she was not otherwise entitled to."

In view of the above discussion, the writ petition is allowed. The respondents are directed to extend the benefit of stepping up of pay to the petitioner in terms of the judgment of the Tribunal dated 28th July, 1989 as upheld by this Court vide its judgment dated 23rd November, 2001 and pay to the petitioner all consequential benefit together with interest @ 6% per annum within a period of three months from the date of service of copy of this judgment.

The writ petition is accordingly allowed with no order as to costs.

[MOHAMMAD RAFIQ],J.

A.K.Chauhan/-